IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

RCRev..No. 104 of 2007()

RCA.82/2002 of ADDL. DISTRICT COURT (ADHOC), THALASSERY
RCP.120/1991 of PRL.M.C.,KANNUR
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REVISION PETITIONER/APPELLANT/RESPONDENT

KIDAVINTAVIDA ABDUL AZEEZ,
S/O.ABDULLA HAJI,KANNUR 1 AMSOM,CAMP BAZAR,
KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SMT.SANJANA R.NAIR

RESPONDENT: RESPONDENT/RESPONDENT/PETITIONER1

MADATHIL THATTANTAVIDA ABDUL GAFOOR,
S/O.MUHAMMED KUNHI,PUZHATHI AMSOM,KAKKAD DESOM,
KANNUR DISTRICT.

BY ADV. SRI.M.K.SUMOD

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON 11/4/2007 PASSED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.

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R.C.R.No.104 of 2007

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Dated this the 11th day of April, 2007.

ORDER

Antony Dominic,J.

The tenant in RCP No. 120 of 1991 on the file of the Rent Control Court, Kannur is the Revision Petitioner.

2. The respondent landlord filed the petition invoking grounds under Section 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act 1965 (hereinafter referred to as 'the Act' for short). The landlord alleged arrears of rent from January 1990 and also stated that he was a gulf returnee who wanted to start stationary business in the petition-scheduled building. It was also alleged that the tenant had acquired ownership and possession of building No.SB IV/86 & 87 in Kannur Municipal Area in the year 1971 and that he was still in possession of the same, which according to the landlord was kept locked. The landlord contended that the room was reasonably sufficient to accommodate the business of the tenant. Subsequently, the petition was amended and it was stated by the landlord though he lost his job in Kuwait during the Gulf War, he was fortunate to get it back after the war. According to him, although he was still in Kuwait, being a heart patient and had undergone a bye pass surgery, due to health reasons, he wanted to return and settle down in his native place and start the business in the petition scheduled building.

3. The tenant admitted tenancy and quantum of rent. It was stated that rent fell in arrears as the money order sent by him was returned due to the absence of payee from India. According to the tenant he was ready to discharge the entire arrears. It was also contended that the need urged by the landlord for

own occupation was not true or genuine and that, being a wealthy person the landlord was in possession of several buildings. The tenant also pleaded for the benefit of the 2nd proviso to Section 11 (3), contending that the cycle repair shop, he was running in the petition schedule building was his sole source of livelihood and that suitable buildings were not available in the locality. The tenant admitted ownership of the building pointed out by the landlord, but contended that the same is in the possession of his son Arif, who was conducting a business in stationery articles.

4. Evidence of PW1, PW2 and RWs1 and 2 were recorded. Exts.A1 to A6 on behalf of the landlord and Exts.B1 and B2 on behalf of the respondents were marked. The reports submitted by the Advocate Commissioner were marked as Exts.C1 and C2. X1 and X2 series were also marked.

5. The Rent Control Court by its order dated 04.01.2002 held the grounds under Section 11(2)(b) and 11(3) against the landlord. However, eviction was ordered under Section 11(4)(iii) of the Act. Aggrieved by the order of eviction, the tenant filed RCA No.82 of 2002 and cross appeal was filed by the landlord, against the order in so far as it declined eviction under Sections 11(2)(b) and 11 (3) of the Act. The Appellate Authority vide judgment dated 15.12.2006 rejected the cross appeal filed by the landlord and upholding the eviction ordered under Section 11(4)((iii), dismissed the Rent Control Appeal filed by the tenant. It is aggrieved by the concurrent orders of eviction under Section 11(4)(iii) of the Act, that the tenant has filed this revision before us.

6. We heard the counsel for the Revision Petitioner and the counsel for the respondent landlord who entered appearance on caveat and considered their submissions.

7. The only issue that need our consideration is the correctness of the order passed by the Rent Control Court under Section 11(4)(iii) of the Act, and

affirmed by the Rent Control Appellate Authority. It is the admitted fact that the petitioner herein own two rooms at South Bazar in Kannur Municipality numbered as SB/IV/86 and SB/IV/87 respectively and Ext.A3 is the certified copy of the Jenmon deed of 1971. According to the landlord these rooms are in the possession of the tenant and kept locked and are reasonably sufficient for their requirements of the tenant. While the tenant contended that the rooms are in the possession of his son Arif and that he was carrying on the business in stationery articles in the building. As rightly pointed out by the Rent Control Court the crucial time with reference to which the possession and vacancy of the building is to be assessed, is the point of time when the landlord demanded vacant possession from his tenant, viz., 10.04.1991.

8. While examining this issue as stated above, the Rent Control Court has made reference to Ext.C1 report of the Commissioner, who was also examined as PW2. In his report as well as in the evidence, the Commissioner stated that at the time of inspection the rooms were locked. He had an inside view of the rooms through the gap in between the wooden planks, which also gave him the impression that the rooms were kept idle. The tenant admitted that at the time of inspection the room was closed, but his explanation was that Arif, his son, who was also examined as RW2, had closed the shop at 12.00 noon in order to attend Friday prayers. This was put to the Commissioner when he was cross examined but the answer was in the negative and stating that from the appearance of the building and the attendant circumstances the suggestion was untrue. The landlord had also produced Ext.A4 building tax assessment register for the period from 1985-86 to 1994-95. Rent Control Court has stated that as per Ext.A4 during the period upto 1991, the room was locked and for the latter period, the entry was that the room was vacant. Based on the evidence available as above, the Rent Control Court found that at the relevant time, the room was vacant and presumed that the owner was in possession in the building. The Rent Control Court also overruled the objection of the tenant that the Commissioner had inspected the building of the tenant without serving notice

on the tenant, taking into account the fact that the Commissioner has been examined in Court and cross examined on behalf of the tenant.

9. Turning to the evidence that was let in by the tenant, the court made detailed reference to the licenses as produced Ext.X1 series and professional tax receipt, X2 series. Although, the genuineness of these documents were disputed by the landlord, that was overruled by the Rent Control Court. However, in the absence of any corroborative evidence, the court placed reliance on the report of Commissioner and Ext.A4 and declined to accept the contention of the tenant that the building was in the actual occupation of RW2, Sri.Arif. The court has also made reference to the 2nd inspection of the Commissioner on 02.03.1993, almost after an year of the first inspection. Although on this occasion the Commissioner found that a stationery shop was being conducted by RW2, the court did not attach any credence to the 2nd report, in view of the long interval between the inspections.

10. Thereafter, the question as to whether the building owned by the tenant was reasonably sufficient for his requirements was also examined by the Rent Control Court. On evidence of the tenant itself and the measurement in Ext.C1 Report, it was found that the building was more spacious than the petition scheduled room, and that the distance between the two is below one kilometer. The building was also found to be in a commercially important place of the same locality. Accordingly it was held by the Court that the room was reasonably sufficient for his requirement.

11. The Rent Control Appellate Authority affirmed the finding of the Rent Control Court, making particular reference to Ext.C1 report of the Commissioner and his evidence as PW2. It held that on evidence the fact that the tenant was in possession of the building was proved. On the basis of the admission of RW1, the tenant himself, that the building owned by him is larger than the petition scheduled building and making reference to the measurements of the

room provided by the Commissioner in his report, the Appellate Authority agreed with the findings of the Rent Control Court that the room was sufficient for doing business of the tenant.

12. According to us the evidence and findings of the Rent Control Court and the Appellate Authority, do not suffer from any irregularity. The findings are consistent with the evidence available and do not call for any interference.

In the result the revision petition is dismissed without any order as to costs.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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